non-payment. But in the absence of a showing as to the seriousness of the damage suffered by him, or as to the probability of further breaches by the defendant, the plaintiff is not privileged to refuse further deliveries, and has no right to damages based on the assumption of further non-performance by the defendant. The rule should be the same even where the Sales Act has not been adopted.

CRIMINAL LAW—INSANITY—EFFECT OF INSANITY AT TIME OF TRIAL.—The defendant, who was not represented by counsel, was convicted of an assault with intent to rape. Later a lawyer was secured, who moved for a new trial, alleging that the defendant was insane at the time of trial. The trial court offered to submit the question of present insanity to a jury, under a code section relating to insanity supervening after conviction, but declined to hear evidence to show that the defendant was insane when tried as a ground for granting a new trial on the original indictment. *Held,* that the trial court should have heard and considered the evidence, and if it appeared that the defendant was insane when tried, should have granted a new trial. *Gardner v. State* (1917, Tex.) 198 S. W. 312.

As suggested by the court, reversal of the first trial was warranted by an objection more fundamental than that of newly discovered evidence, namely, that the insanity of the appellant avoided the former proceedings. Nor, it would seem, does the objection really depend on the fact that he could not be held to know of his insanity so as to plead it as a defense. It is elementary that a man cannot legally be tried, or convicted, or sentenced, while in a state of insanity. 1 Bishop, *Criminal Law,* sec. 396; 1 Wharton, *Criminal Law,* sec. 58 *et seq.* Where the question of present insanity is raised before trial, the usual procedure is to present the question to the trial jury. *Frith's Case* (1790) 22 How. St. Tr. 307. But other procedure may be adopted in the discretion of the court. See *Freeman v. People* (1847, N. Y. Sup. Ct.) 4 Den. 9. It is for the court to determine whether there is sufficient evidence to warrant submission of the question to the jury. *Spann v. State* (1872) 47 Ga. 549. And the determination of this question is not reviewable on appeal. *Webber v. Commonwealth* (1888) 119 Pa. 223. The question of present insanity may be raised at any stage of the trial, and the court must receive any evidence offered but may dispose of the issue as it sees fit. *State v. Reed* (1889) 41 La. Ann. 581. The approved course seems to be to submit the special issue with the general issue to the jury. The instant case is novel in that it appears to be the first in which the question of insanity at the time of trial was not raised until later. But there are cases holding that where it appears after trial that the defendant was deaf and dumb, or intoxicated, and therefore incapable of understanding the proceedings, the trial will be set aside. *Regina v. Berry* (1876, Cr. Cas. Res.) 1 Q. B. D. 447; *Taffe v. State* (1861) 23 Ark. 34.

DAMAGES—BREACH OF CONTRACT—DAMAGES RESULTING FROM DEATH OF WIFE.—In consideration of one dollar deducted monthly from the plaintiff's wages, the defendant company agreed to provide him and his family with medical attention. The plaintiff's wife having become ill, the plaintiff sent for the company's doctor. He refused to attend her. The plaintiff brought an action for breach of contract, and, alleging that he could not afford to engage another doctor, claimed damages for the death of his wife. *Held,* on demurrer, that the plaintiff had a cause of action. *Owens v. Atlantic Coast Lumber Corp.* (1917, S. C.) 94 S. E. 15.

A husband has by the common law a legal right to the society and services of his wife. Schouler, *Husband and Wife*, sec. 143. He may maintain an action for an injury to this right. *Kelly v. New York, N. H. & H. R. R. Co.* (1897) 168 Mass. 308, 46 N. E. 1063; *Birmingham Southern Ry. Co. v. Lintner* (1904) 141 Ala. 420, 38 So. 363. The husband's right to recover for loss of *consortium* has been denied, however, since the enactment of legislation enlarging the rights of married women. *Bolger v. Boston El. Ry. Co.* (1910) 205 Mass. 420, 91 N. E. 389. But the common law right of recovery was always limited to damages accruing before the wife's death. *Baker v. Bolton* (1808, N. P.) 1 Camp. 493. In the absence of statute, damages resulting solely from the death are not an element of recovery. *Hyatt v. Adams* (1867) 16 Mich. 180; *Covington Street Ry. Co. v. Packer* (1872, Ky.) 9 Bush, 455. The English courts have qualified this general rule and have held that where the conduct of the tort-feasor resulting in the death of the plaintiff's wife constitutes also a breach of a contract duty to the husband, and the death is not therefore an essential part of his cause of action, damages resulting from the death will be permitted as an element of recovery. *Jackson v. Watson* (C. A.) [1909] 2 K. B. 193. The American authorities, however, are opposed to such a distinction, and hold that the general rule is as well applicable to actions of contract as to actions of tort. *Sheerlag v. Kelley* (1908) 200 Mass. 232, 86 N. E. 293; *Duncan v. St. Luke's Hospital* (1906) 113 App. Div. 68, 98 N. Y. Supp. 867, affirmed 192 N. Y. 580, 85 N. E. 1109. The principal case was an action on the contract. It would seem, therefore, that although there did exist in favor of the husband a cause of action, his damages, according to the American authorities, were merely nominal, unless it should appear that actual damages were suffered prior to the wife's death.

DEEDS — DELIVERY IN ESCROW — REVOCATION — STATUTE OF FRAUDS. — The plaintiffs entered into an oral agreement to exchange land with the defendants, M. and P. Both deeds were to be deposited with the other defendant, an attorney, who was to deliver the deeds to the respective grantees after examining titles. M. and P. did so deposit their deed, but later instructed the attorney not to deliver it. The plaintiffs' deed was not deposited until after this instruction had been given. The plaintiffs sued to compel a delivery. *Held*, that as there was no written contract or memorandum to satisfy the statute of frauds, the depositary in escrow could not be compelled to deliver the deed. *McLain v. Healy* (1917, Wash.) 168 Pac. 1.

The rule announced in the principal case, which practically overrules the case of *Manning v. Foster* (1908) 49 Wash. 541, 96 Pac. 233, and follows a still earlier case, makes clear the position of the state of Washington on this point. This view has been supported by text-books and by a few recent cases. 1 Devlin, *Deeds* (3d ed.) sec. 313; *Campbell v. Thomas* (1877) 42 Wis. 437; *Clark v. Campbell* (1901) 23 Utah 569, 65 Pac. 496; *Holland v. McCarthy* (1916) 173 Cal. 597, 160 Pac. 1069. Though rules concerning delivery in escrow were developed at an early date in our law, there was no suggestion of this rule until the case of *Fitch v. Bunch* (1866) 30 Cal. 208. It is apparently based upon the idea that the rights and powers created by a deposit in escrow depend wholly upon contract. See *Campbell v. Thomas, supra.* Such a rule puts an unfortunate limitation upon the utility of the conditional delivery of conveyances. In many cases, at least, it is the intention in a delivery in escrow, and is essential to its purpose, that it be irrevocable. *Fine v. Lasater* (1913) 110 Ark. 425, 161 S. W. 1147. Indeed, it is the very nature of an escrow that, as to the grantor, the transaction is entirely executed. The delivery of a deed in escrow creates in the grantee of the deed a legal power to obtain title to